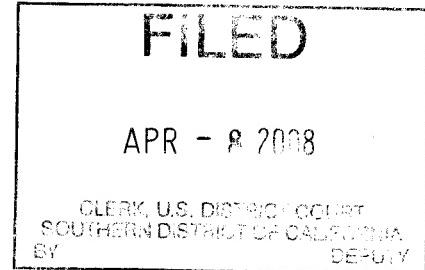


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13
 14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA 08cr1071-L

16 UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ0912
 17 v.)
 18 Plaintiff,) STIPULATION OF FACT AND JOINT
 19 JOSE MIGUEL RODRIGUEZ,) MOTION FOR RELEASE OF
 20 Defendant.) MATERIAL WITNESS(ES) AND

 _____ ORDER THEREON

 _____ (Pre-Indictment Fast-Track Program)

13 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES
 14 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
 15 Douglas Keehn, Assistant United States Attorney, and defendant JOSE MIGUEL RODRIGUEZ, by
 16 and through and with the advice and consent of defense counsel, Paul D. Turner, that:

17 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 18 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 19 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 20 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 21 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
 22 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

23 //

24 WDK:psd:3/25/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government not later than five business days
 3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
 5 before **April 24, 2008**.

6 4. The material witness, Vanessa Guzman-Sandoval, in this case:
 7 a. Is an alien with no lawful right to enter or remain in the United States;
 8 b. Entered or attempted to enter the United States illegally on or about
 9 March 24, 2008;
 10 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
 11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an
 12 alien with no lawful right to enter or remain in the United States;
 13 d. Was paying an unknown amount to others to be brought into the United States
 14 illegally and/or transported illegally to her destination therein; and,
 15 e. May be released and remanded immediately to the Department of Homeland
 16 Security for return to her country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
 18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
 19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
 20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
 22 substantive evidence;
 23 b. The United States may elicit hearsay testimony from arresting agents
 24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
 25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
 26 of (an) unavailable witness(es); and,

27 //

28 Stipulation of Fact and Joint Motion for Release of
 Material Witness(es) And Order Thereon in
 United States v. Jose Miguel Rodriguez

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness(es) to the Department of
 11 Homeland Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.

13 Dated: 4/8/08

14 Dated: 4-4-08

15 Dated: 4-4-08

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

DOUGLAS KEEHN
Assistant United States Attorney

PAUL D. TURNER
Defense Counsel for RODRIGUEZ

JOSE MIGUEL RODRIGUEZ

Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,
THE STIPULATION is admitted into evidence, and,
IT IS ORDERED that the above-named material witness(es) be released and remanded
forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 4/8/08

W. Melvin
United States Magistrate Judge